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January 28, 2005

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth St., S.W.
Washington, D.C. 20554

**Re: AT&T Petition for Declaratory Ruling Regarding
“Enhanced” Prepaid Calling Card Services, WC Docket
No. 03-133;**
Level 3 Petition for Forbearance, WC Docket No. 03-266;
IP-Enabled Services, WC Docket No. 04-36;
**Developing a Unified Intercarrier Compensation Regime,
CC Docket No. 01-92**
**Global Crossing Telecommunications Inc. and SBC
Communications Inc. Petitions for Declaratory Ruling
Concerning Terminating Switched Access Charges for
Wireless-Originated Calls, WC Docket No. 04-424**

Dear Ms. Dortch:

On behalf of WilTel Communications, LLC (“WilTel”), Adam Kupetsky of WilTel and the undersigned made separate *ex parte* presentations yesterday to: (1) Jennifer Manner, legal advisor to Commissioner Abernathy; (2) Jessica Rosenworcel, legal advisor to Commissioner Copps; and (3) Tamara Preiss, Chief, Pricing Policy Division, Wireline Competition Bureau (“PPD/WCB”), Steve Morris, Deputy Chief, PPD/WCB, and Jay Atkinson, Chris Barnekov, Fred Campbell, Randolph Clarke, and Victoria Schlesinger of the PPD/WCB staff.

In each of these meetings, WilTel made the following points with regard to the AT&T petition for declaratory ruling regarding so-called “enhanced” prepaid calling cards, WC Docket No. 01-133:

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First, WilTel pointed out the importance of the Commission's expeditiously resolving the issues raised in this proceeding, and clearly enforcing its rules requiring the non-discriminatory application of access charges and universal service contributions. WilTel noted that access and USF make up by far the largest single cost of interexchange service, and hence that competitors in this market have a strong incentive to evade such payments if they can. The present situation, in which some carriers make the required payments, while others do not by mischaracterizing their telecommunications offerings as "information services," unlawfully and unfairly distorts the long-distance marketplace. Consumers, honest competitors, and the universal service fund all are severely damaged by the Commission's delay in addressing this *de facto* discrimination. 1/

WilTel explained that AT&T's so-called "enhanced" prepaid calling card service is one example of this market-distorting phenomenon resulting from the FCC's failure to take action. AT&T actually is providing two separate services paid for by different categories of customers: (1) the prepaid long-distance calling service that is purchased by the end-user using the card, and (2) the placement of advertisements or other recorded information, paid for by the card retailer or advertiser. 2/ The Commission should see through AT&T's attempts to obfuscate the issue by conflating these two services into one, and should clearly address the proper treatment of each of these distinct services (as telecommunications vs. information service) for purposes of access and universal service payments. The record in this proceeding provides the Commission with ample means to do so. 3/ Contrary to AT&T's disingenuous argument, this service has nothing to do with offerings (such as broadband-originated Voice Over Internet Protocol service) in

1/ WilTel has discussed these serious competitive problems on multiple occasions. See, e.g., Letter from Blaine Gilles, Senior Vice President, Voice Services and Strategic Markets, WilTel Communications LLC, to Chairman Powell, WC Docket No. 03-133 (Aug. 16, 2004); WilTel Communications Expedited Petition to Reduce or Adjust the Proposed Fourth Quarter Contribution Factor, CC Docket No. 96-45 and WC Docket No. 03-133 (filed Sept. 22, 2004).

2/ See <http://www.consumer.att.com/prepaidcard>), where AT&T makes it clear that two different services are provided to two separate sets of customers: end-users who place telephone calls ("Smart and Simple Calling") and the retailers and advertisers who use the cards to promote themselves ("Promote Your Business With AT&T Prepaid Phone Cards!").

3/ See, e.g., Comments of Qwest Services Corp., WC Docket No. 03-133 (June 26, 2003), at 5; Letter from Ann Rakestraw, Assistant General Counsel, Verizon, to Marlene H. Dortch, Secretary, WC Docket No. 03-133 (July 15, 2004), at 3-6; Letter from Glenn T. Reynolds, Vice President – Federal Regulatory, BellSouth Corp., to Marlene H. Dortch, Secretary, WC Docket No. 03-133 (August 5, 2004), at 2-4.

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which a single service incorporating multiple inputs is provided to and paid for by a single customer.

In particular, WilTel discussed the need for the Commission to emphasize to all parties that its legal rulings cannot be undercut or evaded by strained legal argumentation invoking distinctions without a difference. In the recent *IP-in-the-Middle* decision, the Commission brought welcome clarity by clearly ruling that PSTN-to-PSTN transmissions fall within the telecommunications category, regardless of whether they are converted into and out of Internet protocol (“IP”) format along the way.^{4/} But in its November 22, 2004 *ex parte* letter, AT&T absurdly suggests that, even if the prepaid calling card service described in its initial petition is “telecommunications,” a “variant” in which the service is transmitted in part over an Internet backbone network in IP format may qualify as “information service.” AT&T is plainly wrong; the fact that prepaid calls are dialed using a 1-8XX number rather than using a 1+ dialing pattern is a distinction without a difference. The FCC must send an unequivocal message -- not just to AT&T but to all competing service providers -- that they cannot evade their responsibilities through strained legal theories. If the Commission finds that AT&T’s prepaid calling card service is “telecommunications,” then it follows from this decision and the *IP-in-the-Middle* decision that the variant discussed above is “telecommunications.”

Finally, WilTel reiterated that the Commission needs to make it very clear to parties that they will face real consequences when they adopt aggressive regulatory strategies in order to avoid paying access charges and universal service contributions. To the extent access charges and universal service contributions are due for AT&T’s prepaid calling card service, the record provides ample support for applying them *retrospectively* as well as prospectively. The law has not changed in this area. By contrast, allowing companies to escape retroactive liability for a clear violation of Commission rules would send exactly the wrong signals: it would essentially validate the strategy of using such regulatory tactics to obtain unfair competitive advantages over other carriers that make the required access charge and universal service payments. The Commission must fulfill its statutory responsibility to enforce its rules in a way that enables companies to be rewarded for their efficiency and their ability to meet customer needs -- not for scheming and “lucking out” in a regulatory game of chance.

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^{4/} *Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, 19 FCC Rcd 7457 (2004).

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In addition, during each of these *ex parte* presentations, WilTel reiterated the points relating to non-discriminatory PSTN interconnection for all broadband VoIP traffic that it made in its December 21, 2004 *ex parte* filing in WC Docket Nos. 04-36 and 03-266, and CC Docket No. 01-92.

In the meeting with the Wireline Competition Bureau staff, WilTel re-emphasized the points it made in its comments filed on January 7, 2005 in WC Docket No. 04-424 regarding the jurisdictional treatment of terminating switched access charges for wireless-originated calls. WilTel also discussed the points relating to Virtual NXX that were stated in its *ex parte* letter filed October 7, 2004 in CC Docket No. 01-92, especially with respect to non-ISP-bound Virtual NXX traffic. Finally, WilTel urged the Commission to preserve nondiscrimination safeguards as it considers and implements intercarrier compensation reform.

If you have any questions, please contact the undersigned.

Respectfully submitted,

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cc: Christopher Libertelli
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